

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID HOWARD,	:	
	:	
Plaintiff,	:	C.A. No. 02-3797
	:	
v.	:	
	:	
UNITED STATES POSTAL SERVICE,	:	
	:	
Defendant.	:	

**DECLARATION OF JOSEPH M. RUSER**

I, JOSEPH M. RUSER, declare under penalty of perjury as follows:


1. I am a Acting Labor Relations Specialist in the Labor Relations Office of the Lancaster District of the United States Postal Service.
  2. My duties and responsibilities include, but are not limited to, representing management officials from the Lancaster District of the United States Postal Service in disputes, including but not limited to grievances, arising out of collective bargaining agreements between the Postal Service and its labor organizations.
  3. The terms and conditions of employment for Postal Service employees in the mailhandler craft are generally governed by the Mailhandlers National Agreement.
  4. I am familiar with Plaintiff David Howard from reviewing the motion to dismiss and the records from the Postal Service Labor Relations Grievance Arbitration Tracking System [GATS] database. Plaintiff was a career craft level employee who worked as a mailhandler within the workforce of the Postal Service prior
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to his removal. Plaintiff was a member of the Mailhandler union. The collective bargaining agreement between such employees and the Postal Service, known as the Mail Handlers National Agreement, applied to Plaintiff.

5. I have reviewed the Motion to Dismiss to which this declaration is attached. The provisions cited in the motion were in effect for each bargaining agreement with the Mailhandlers from 1996 through the present: Article 2, Section 2.1; Article 2, Section 2.3; and Article 15.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge, information and belief that the above statements are true and correct.

EXECUTED this 6th day of September 2002

  
JOSEPH M. RUSER  
Acting Labor Relations Specialist  
Labor Relations Office  
Lancaster District  
United States Postal Service

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DAVID HOWARD,	:	
	:	
Plaintiff,	:	C.A. No. 02-3797
	:	
v.	:	
	:	
UNITED STATES POSTAL SERVICE,	:	
	:	
Defendant.	:	

**DECLARATION OF FRANK JACQUETTE**

I, FRANK JACQUETTE, declare under penalty of perjury as follows:

1. I am a Labor Relations Specialist at the Headquarters Labor Relations Office of the United States Postal Service in Washington D.C.
  2. My duties and responsibilities include, but are not limited to, overseeing and conducting the most complex projects for the design, development, implementation, evaluation, monitoring, administration, and improvement of national labor relations programs and policies, including agreement implementation, grievance handling, arbitration, contract analysis, collective bargaining, and appeals.
  3. My duties also include providing support and guidance to the labor relations representatives in the field. My team is assigned to handle matters involving the USPS- National Postal Mail Handlers' National Agreement.
  4. The terms and conditions of employment for Postal Service employees in the mailhandler craft are generally governed by the USPS- National Postal Mail Handlers National Agreement.
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5. According to the contract, either an employee or a union steward may initiate a grievance at step 1. Article 15.2.

6. The union may unilaterally decide whether to appeal a step one grievance to step 2, 3 or 4 of the Grievance-Arbitration procedure. Article 15.2.

7. At all times the union has the right and authority to settle any grievance, in whole or in part, with or without the consent of the individual grievant. Article 15.2.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that to the best of my knowledge, information and belief that the above statements are true and correct.

EXECUTED this 21<sup>st</sup> day of November 2002.

  
FRANK X. JACQUETTE III  
Labor Relations Specialist  
Contract Administration NRLCA/NPMHU  
Headquarters  
United States Postal Service

**EXHIBIT "G"**

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CAROSELLA & FERRY, P.C.  
ATTORNEYS AT LAW

October 29, 1998

Mr. Jeffrey Bergen  
General Manager  
Southeastern Post Office  
Southeastern, PA 19399-9998

RE: David Howard, SS #166-58-0352

Dear Mr. Bergen:

This law firm represents Mr. David Howard, a U.S. Post Office employee since 1987, in his attempt to return to employment at the Southeastern Post Office location. Specifically, Mr. Howard, attempting to recover from a prior drug dependency and subsequent depression, submitted medical documentation that he was able to return to work, but should remain on day shift indefinitely.

Unfortunately, and apparently without valid justification, during May of 1997 both Mr. Frank J. Ranieri, Manager of Distribution Operations and Mr. Tung Min Kwan, Acting Plant Manager, sent letters to Mr. Howard's attention denying his request for a "revised schedule" stating that it was for personal reasons and personal convenience and therefore denied. It should be noted that both Mr. Ranieri and Mr. Kwan's letters are incorrect, in that as per the documentation submitted by Mr. Howard, the request for the revised schedule was for medical reasons.

A May 9, 1997 letter from Mr. Ranieri states "the seven previous requests .....were so that you could resolve your personal problems." Again, this assumption is incorrect. Mr. Howard has submitted the following medical reports and documents concerning the need for a consistent day shift schedule:

- A January 14, 1997 note from Dr. Joseph K. Stanella stating that treatment of Mr. Howard is going well and part of his improvement is due to his being able to work on day shift, which according to Dr. Stanella "it is imperative for his continued treatment that he continue to work only on day shift. This is for medical necessity. Switching to another shift would seriously jeopardize his treatment."
- An undated letter from Dr. Stanella simply stating "Mr. David Howard continues in treatment. He continues to do well. As part of his treatment he needs to continue working on the day shift only."

Mr. Jeffrey Bergen  
October 29, 1998  
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- A February 4, 1997 return to work certification signed by Dr. Stanella listing the work restrictions as day shift only for at least six (6) months.
- A light duty medical statement of physical condition signed by Dr. M. H. Etezady stating that as of 9/21/96 David Howard is partially incapacitated from work.
- A January 26, 1998 duty status report signed by Dr. Etezady stating that "Mr. Howard will be able to work forty (40) hours per week. This work needs to be day shift only, with no change in his schedule."
- A June 1, 1998 Physician's Certification from Dr. Etezady stating that, as medical limitations, Mr. Howard "has to be on day shift only."
- A July 27, 1998 note from Dr. Etezady stating that David Howard may return to work and "please note that unless Mr. Howard works on a day shift his treatment and present state of stability will be at risk."

In spite of these many medical documents submitted on behalf of Mr. Howard, letters from Mr. Ranieri and from the Distribution Operations indicate that Mr. Howard is being separated from the employ of the Postal Service because of the "inability to perform the duties of your position." This is patently untrue, as is obviously shown in the medical documents listed above.

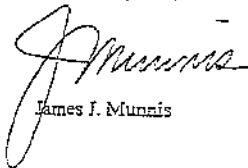
Mr. Howard has attempted to bring a grievance in this matter but the step process of the grievance has been untimely. As of the date of this letter, Mr. Howard has been out of work for over sixteen (16) months and has no health insurance. He has continually attempted to return to work during this period. Both Mr. Howard's statements and medical documentation show that he is ready, willing and able to return to work. He is and has been able to perform the duties of his position as a mail handler. The only reasonable accommodation requested is for day shift, which is for medical reasons. Additionally, this accommodation is not permanent but rather indefinite. I find it ironic that casuals work during the day, yet you state that you are unable to accommodate Mr. Howard.

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Mr. Jeffrey Bergen  
October 29, 1998  
page 3

While step four of the grievance is certainly untimely, it should be noted that Mr. Howard merely wants to be returned to work with back pay. Please act in good faith and reinstate Mr. David Howard and pay him back wages for the time that he was wrongfully terminated. I would ask that you provide an answer to this reinstatement request to my attention and no later than thirty (30) days, that is, by November 29, 1998. Thank you for your expected cooperation in this matter.

Very truly yours,



James J. Munnis

JJM/jb

cc: D. Howard  
cc: F. Phillips

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**EXHIBIT "J"**

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01	EFFECTIVE DATE 05-02-2002	02	SOCIAL SECURITY NUMBER 165-58-0352
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## Notification of Personnel Action

## EMPLOYEE INFORMATION

03	EMPLOYEE NAME-LAST	HOWARD
04	EMPLOYEE NAME-FIRST	DAVID
05	EMPLOYEE NAME-MIDDLE	A
06	MAILING ADDRESS STREET BOX/APT	422 FORGE LN
07	MAILING ADDRESS-CITY	EXTON
08	MAILING ADDRESS-STATE	PA
09	MAILING ADDRESS-ZIP-4	19341-1816
10	DATE OF BIRTH	04-07-1968
11	VETERANS PREFERENCE	1 - NO PREFERENCE
12	SEX	M
13	RACE	E - WHITE, NON-HISPANIC
14	DISABILITY	05
15	LEAVE COMP DATE	12-31-1988
16	ENTER ON DUTY DATE	12-31-1988
17	RETIREMENT COMP DATE	12-31-1988
18	SERV ANNIVERSARY DATE	02-1989
19	TS2 ELIGIBILITY	Y - ELIGIBLE WITH DEDUCT
20	TS2 SERVICE COMP DATE	12-31-1988
21	PRIOR CSRS SERVICE	N
22	FROZEN CSRS TIME	
23	LEAVE DATA-CATEGORY	8 - HOURS/PP
24	LEAVE DATA-CHG DATE	03-2004
25	LEAVE DATA-TYPE	1 - ADVANCED AT BEGINNING
26	CRSCT MILITARY SERV	
27	INSTAID MILITARY	
28	RETIREMENT PLAN	8 - FERS
29	EMPLOYEE STATUS	
30	LIFE INSURANCE	CO - Basic Only
31	SPECIAL BENEFITS	

## POSITION INFORMATION

32	EMPLOY OFFICE-PIN NO	41-1627
33	EMPLOY OFFICE-NAME	SOUTHEASTERN POST OFFICE
34	EMPLOY OFFICE-ADDRESS PA 19399-9994	
35	DUTY STATION-PIN NO	41-1627
36	DUTY STATION-NAME	SOUTHEASTERN POST OFFICE
37	APPT EXPIRATION DATE	
38	POSITION EXPIR DATE	

39	RUSH STATUS	N - NON-EXEMPT
40	DELIVERY LOCATION	102
41	RURAL CARRIER-ROUTE	
42	RURAL CARRIER-ROUTE ID	
43	RURAL CARRIER-PAY TYPE	
44	RURAL CARRIER-WEEKLY	
45	RURAL CARRIER-PA	
46	RURAL CARRIER-COMMIT	
47	RURAL CARRIER-EMP	
48	RURAL CARRIER-HOURS	00
49	RURAL CARRIER-MILES	000
50	JOBS SEQUENCE	1
51	OCCUPATION CODE	2315-01XX
52	POSITION TITLE	MAIL HANDLER
53	FUNCTIONAL OPERATOR	1700
54	DESIGNATION ACTIVITY	120
55	POSITION TYPE	1 - FULL TIME
56	UNIT HOURS	00
57	ALLOWANCE CODE	
58	EMPLOYMENT TYPE	

## SALARY INFORMATION

59	PAY RATE CODE	A - ANNUAL RATE
60	PAY SCHEDULE CODE	M - MAIL HANDLER
61	GRADE/STEP	06/K
62	BASIC SALARY	37.815
63	COLA	
64	COLA FOLLOWING	
65	NEXT STEP DATE	17-2002
66	MERIT ANNIV DATE	
67	MERIT LUMP SUM	
68	SPECIAL SALARY CODE	
69	PROTECTED RSC	
70	PROTECTED GRADE/STEP	
71	EXPIRATION DATE	
72	PROTECTED RC HOURS	
73	PROTECTED RC MILES	
74	RC GUARANTEED SALARY	
75	ANNUITY AMOUNT	
76	RED CIRCLE CODE	0

## NATURE OF PERSONNEL ACTION

77	NATURE OF ACTION CODE	325
78	DESCRIPTION	SEPARATION DISABILITY
79	REMARKS	

LAST DAY IN PAY STATUS 05-16-1997  
 EMPLOYEE TO BE PAID FOR ALL ACCUMULATED LEAVE TO WHICH ENTITLED UNDER  
 EXISTING LAW.  
 SF 2 & TS2 WITHDRAWAL PACKAGE GIVEN TO EMPLOYEE  
 GRIEVANCE SETTLEMENT C94M-1C-C-98000210 & EEOC 170-A1-0053X  
 & AGENCY # 1C-195-0023-98 JLC 05162002

July 11-02

83	AUTHORIZATION GARY L. MCCURDY, VP AREA OPERATIONS-ALLEGHENY AREA	84	PROCESSED DATE 05-20-2002
		85	PERSONNEL OFFICE ID MF49
		86	OFF LOCATION SOUTHEASTERN POST OFFICE

UNITED STATES POSTAL SERVICE  
SOUTHEASTERN POST OFFICE  
1000 W VALLEY RD  
SOUTHEASTERN, PA 19359-9994

DAVID A HOWARD  
422 FORGE LN  
EXTON, PA 19341-1816

#### CONDITIONS PERTINENT TO ALL TYPES OF PERSONNEL ACTIONS

The personnel action identified on the enclosed form, *Notification of Personnel Action* is subject to all applicable laws, rules and regulations governing employment with the U. S. Postal Service. The action may be corrected or cancelled if not in accordance with all legal or regulatory requirements, or if based upon your misrepresentation or fraud.

In addition, the level of the position to which you are officially assigned may be reviewed and corrected by your personnel office.

#### INFORMATION ABOUT APPOINTMENTS

The Postal Service places most positions in the "Postal Career Service." The Postal Service sets qualification requirements and controls recruitment for such positions. As a general rule, persons selected from Postal Service registers to fill continuing jobs are given career appointments. Such appointments are secured through direct competition with other members of the general public seeking similar work.

During an indicated probationary period, an appointee must demonstrate his/her full competence and fitness for employment. Transfers, promotions, demotions and reassignments during a probationary period are subject to completion of probation.

Temporary or casual appointments do not confer career status and do not lead to a career appointment without some further examination or qualification. Temporary or casual appointments are made when there is no continuing need for a person's service, regardless of the manner in which he/she qualified for appointment. Acceptance of such appointment will not remove a person's name from an employment register on which he/she may later be reached for career appointment.

An employee in the Postal Career Service may transfer non-competitively to a career civil service position in another Federal agency under certain conditions. The personnel office of the Federal agency to which you are seeking a transfer will explain the requirements.

#### INFORMATION ABOUT YOUR STATUS AFTER SEPARATION

If you are separated or placed in a nonpay status for an extended period, your personnel office will furnish you with Standard Form 8 explaining your rights for unemployment insurance benefits. If you were covered by retirement or other benefits programs, you have previously been furnished information about those programs which describes your rights and possible benefits after separation. References for major programs are as follows:

CSRS: ELM 550  
FEAS: Booklet RI 90-1  
FEGLI: Booklet RI 76-20  
FEBEP: FEHB Guide RI 70-2 IN (Career Postal Service  
Office of Inspector General Employees and  
Inspectors)  
FEHB Guide RI 70-2 (Other Career Postal  
Service Employees)  
FEHB Guide RI 70-8 PS (Certain Temporary/  
Noncareer Postal Service Employees)

Under a provision of the health benefits program, most employees have the option to continue their health insurance coverage at their own expense for a temporary period of time after separation. If you are not retiring with eligibility for health benefits, and you are interested in temporary continuation of health insurance coverage, see your personnel office for further information.

You will be given any lump sum payment that may be due you for annual leave at the time of separation. Refund of an appropriate portion of this payment will be required if you are reemployed in a Federal agency in a position under the same leave system during the period covered by such payment.

#### AVAILABILITY OF FURTHER INFORMATION

Consult your supervisor if you have questions about the above statements or the entries on the front of this form. If your questions are technical, your supervisor may refer you to your personnel office, which will have copies of Postal Service manuals and regulations, as well as your individual record, and can then best explain how they apply in your case.



01 EFFECTIVE DATE  
05-02-2002

### Notification of Personnel Action

02 SOCIAL SECURITY NUMBER  
168-58-0352

#### EMPLOYEE INFORMATION

03 EMPLOYEE NAME-LAST HOWARD  
04 EMPLOYEE NAME-FIRST DAVID  
05 EMPLOYEE NAME-MIDDLE A  
06 MAILING ADDRESS  
STREET/BOX/APT 422 FORGE LN  
07 MAILING ADDRESS-CITY ELLINGTON  
08 MAILING ADDRESS-STATE PA  
09 MAILING ADDRESS-ZIP+4 19341-1818  
10 DATE OF BIRTH 04-07-1955  
11 VETERANS PREFERENCE 11 - NO PREFERENCE  
12 SEX M  
13 MINORITY 6 - WHITE, NON-HISPANIC  
14 DISABILITY 00  
15 LEAVE COMP DATE 12-31-1999  
16 ENTER ON DUTY DATE 12-31-1999  
17 PARTIALMENT COMP DATE 12-31-1999  
18 SERV ANNIVERSARY PYR 02-1999  
19 TSP ELIGIBILITY 6 - ELIGIBLE W/O DEDUCT  
20 TSP SERVICE COMP DATE 12-31-1999  
21 PRIOR CSRS SERVICE N  
22 PRIOR CSRS TIME  
23 LEAVE DATA-CATEGORY 6 - HOURS/PP  
24 LEAVE DATA CHG PYR 02-2004  
25 LEAVE DATA-TYPE 11 - ADVANCED AT BEGINNING  
26 CREDIT MILITARY SERV  
27 RETIRED MILITARY  
28 RETIREMENT PLAN 6 - FERS  
29 EMPLOYEE STATUS  
30 LIFE INSURANCE CO - Basic Only  
31 SPECIAL BENEFITS  
32 EMPLOY OFFICE-FIN NO 41-1627  
33 EMPLOY OFFICE-NAME SOUTHEASTERN POST OFFICE  
34 EMPLOY OFFICE-ADDRESS SOUTHEASTERN  
PA 19399-3994  
35 DUTY STATION-FIN NO 41-1627  
36 DUTY STATION-NAME SOUTHEASTERN POST OFFICE  
37 APPX EXPIRATION DATE  
38 PROBATION EXPIR DATE

39 FLSA STATUS N - NON-EXEMPT  
40 PAY LOCATION 02  
41 RURAL CARRIER-DUTY  
42 RURAL CARRIER-DATE  
43 RURAL CARRIER-TYPE  
44 RURAL CARRIER-WEEKLY  
45 RURAL CARRIER-FLSA  
46 RURAL CARRIER-COMMIT  
47 RURAL CARRIER-EMA  
48 RURAL CARRIER-HOURS 00  
49 RURAL CARRIER-MILES 1000  
50 JOB SEQUENCE 1  
51 OCCUPATION CODE 2315-01XX  
52 POSITION TITLE J MAIL HANDLER  
53 FUNCTIONAL OPER NBR 1700  
54 POSITIONAL CONNECTIVITY 1240  
55 POSITION TYPE 11 - FULL TIME  
56 LIMIT HOURS 20  
57 ALLOWANCE CODE  
58 EMPLOYMENT TYPE  
59 SALARY INFORMATION  
60 PAY RATE CODE 14 - ANNUAL RATE  
61 RATE SCHEDULE CODE 14 - MAIL HANDLER  
62 GRADE STEP 04/X  
63 BASE SALARY 37.515  
64 COLA  
65 COLA ADJUSTING  
66 NEXT STEP PYR 17-2002  
67 MERIT ANNIV DATE  
68 MERIT LUMP SUM  
69 SPECIAL SALARY CODE  
70 PROTECTED RSO  
71 PROTECTED GRADE STEP  
72 EXPIRATION PYR  
73 PROTECTED FC HOURS  
74 PROTECTED FC MILES  
75 FC GUARANTEED SALARY  
76 ANNUITY AMOUNT  
77 RSO CIRCLE CODE 0

#### NATURE OF PERSONNEL ACTION

77 NATURE OF ACTION CODE 150  
78 AUTHORITY 35 USC 53011001  
79 DESCRIPTION REACTIVATE  
80 CODE 81 CODE 82 CODE 83 CODE  
84 REMARKS

CANCELS NOA 326 EFFECTIVE 2002-05-02.  
USER ID = 630062 - 2002-05-29.  
CANCELLED TO CORRECT LUMPS

85 AUTHORIZATION  
GARY L. MCCURDY, VP  
AREA OPERATIONS-ALLEGHENY AREA  
86 PROCESSED DATE 05-29-2002  
87 PERSONNEL OFFICE ID MP49  
88 QP LOCATION SOUTHEASTERN POST OFFICE

**EXHIBIT "L"**

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SOUTHEASTERN PROCESSING & DISTRIBUTION CENTER



February 12, 1997

To: David Howard

The medical information which you provided places specific limitations on the duties you may perform.

Based upon these restriction and in accordance with Article 13 of the National Agreement between the United States Postal Service and the Mail Handler's Union, the following light/limited duty assignment is appropriate: Letter Tray Breakdown


This assignment may be modified in accordance with the needs of the service and your medical limitations. This temporary light/limited duty assignment will be reviewed at the expiration of your current medical information or any of the time as deemed appropriate by management. You are required to update your light/limited duty request every thirty (30) days and notify management if your medical limitations are changed or modified in any way.

Effective Saturday, February 15, 1997, your schedule for the duration of the light/limited duty assignment will be as follows. You are expected to return to you bid position on March 15, 1997.

Hours: 07:00 - 15:30

Non-scheduled days: TUWTF

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

  
Frank J. Gagnier  
Senior Manager, Distribution Operations

1000 W. VALLEY ROAD  
SOUTHEASTERN PA. 19395-0241

TEL: 810-954-5429